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OFFICE OF PETITIONS

In re Application of
Follansbee, David :
Application No. 10/719,532 :
Filed: November 21, 2003 :
Attorney Docket No. DAVFOL.002C1 :

ON PETITION

This is a decision on the renewed petition under 37 C.F.R. § 1.137(b), filed October 29, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE), (2) the petition fee, and (3) a proper statement of unintentional delay.

On March 4, 2009, the Examiner issued a non-final Office action. Since this application was abandoned for failure to timely reply to the final Office action of August 14, 2007 within the extendible six month period provided therefor, the Examiner had no procedural authority with respect to the abandoned application. See Lorenz v. Finkl, 333 F.2d 885, 891, 142 USPQ 26, 30 (CCPA 1964). Therefore, the Examiner was without authority to act further in the case absent a grantable petition reviving the application. Nevertheless, in view of this decision on petition, the subsequent action taken by the Examiner, i.e., mailing of a non-final Office action, has been ratified. In view thereof, it is unnecessary to either vacate or re-mail the March 4, 2009 Office action.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

This matter is being referred to Technology Center AU 1644.

Liana Walsh
Petitions Examiner
Office of Petitions